



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2019-0214; FRL-10002-53-Region 4]**

**Air Plan Approval; Alabama: Revisions to Cross-State Air Pollution Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Alabama State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via two letters dated August 27, 2018, and October 25, 2018. The proposed SIP revisions make technical amendments to the State's Cross-State Air Pollution Rule (CSAPR) regulations. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2019-0214 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Scofield can be reached via telephone at (404) 562-9034, or via electronic mail at [scofield.steve@epa.gov](mailto:scofield.steve@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. What Action is EPA Taking?**

EPA is proposing to approve changes to the Alabama SIP that were provided to EPA through two letters dated August 27, 2018, and October 25, 2018.<sup>1</sup> Specifically, EPA is proposing to approve two SIP revisions that include changes to Alabama's CSAPR regulations, found in ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, 335-3-8-.40, and 335-3-8-.46.<sup>2</sup>

Alabama's August 27, 2018, SIP revision makes changes to ADEM's CSAPR regulations by adding the term "Group 2" in several places to Rule 335-3-8-.40 to make the terminology consistent with EPA's CSAPR NOx Ozone Season Group 2 Trading Program regulations.

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<sup>1</sup>EPA received ADEM's submissions on September 7, 2018 and October 30, 2018, respectively.

<sup>2</sup> EPA notes that the Agency received other revisions to Alabama SIP submitted with the August 27, 2018, letter. EPA will consider action on the remaining revisions in separate actions.

Alabama's October 25, 2018, SIP revision changes the CSAPR regulations in Rules 335-3-5-.13, 335-3-8-.14, and 335-3-8-.46 by explicitly addressing the disposition of any allowances that remain after allocations to all existing units have reached their historical emission caps as well as any allowances set aside for new units in Indian country within the State and not used for that purpose. In addition, the October 25, 2018, SIP revision makes minor and administrative changes, such as correcting typographical errors.

## **II. Background**

EPA issued CSAPR in July 2011 and the CSAPR Update in September 2016 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution for specific National Ambient Air Quality Standards (NAAQSs).<sup>3</sup> Under CSAPR, large electricity generating units (EGUs) in Alabama were subject to the Federal Implementation Plan (FIP) provisions requiring the units to participate in federal allowance trading programs for annual emissions of sulfur dioxide (SO<sub>2</sub>) and annual and ozone season emissions of nitrogen oxides (NO<sub>x</sub>). CSAPR includes provisions under which states may submit for EPA approval SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs, provided that the SIP revisions meet all relevant criteria. Alabama previously submitted, and EPA has approved, SIP revisions to replace the CSAPR and CSAPR Update FIP requirements applicable to the State's EGUs with requirements established under Alabama's own CSAPR

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<sup>3</sup> See Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011); Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

state trading program regulations. *See* 81 FR 59869 (August 31, 2016); 82 FR 46674 (October 6, 2017).

### **III. Analysis of State's Submittal**

Alabama's August 27, 2018, SIP revision makes changes to the State's CSAPR regulations by adding the term "Group 2" throughout Rule 335-3-8-.40. These changes were intended to make the terminology in ADEM's Transport Rule (TR) NO<sub>x</sub> Ozone Season Group 2 Trading Program rule consistent with EPA's CSAPR regulations.

Alabama's October 25, 2018, SIP revision makes changes to the State's CSAPR regulations by amending Rules 335-3-8-.14 and 335-3-8-.46, in the CSAPR NO<sub>x</sub> trading rules in Chapter 335-3-8, and Rule 335- 3-5-.13, in the CSAPR SO<sub>2</sub> trading rules in Chapter 335-3-5, to more clearly address the distribution of any allowances that may remain after allocations to all existing units have reached their historical emissions caps. These revisions ensure that Alabama's rules contain provisions explicitly providing for the disposition of the total budget established for units in Alabama by EPA for each trading program, consistent with Alabama's original intent in adopting its trading program regulations and with EPA's understanding when initially approving the regulations into the SIP.<sup>4</sup> Similarly, language was also added to Rule 335-3-8-.14 to explicitly provide for the disposition of 13 allowances that are set aside for any new CSAPR NO<sub>x</sub> Ozone Season Group 2 units in Indian country within the State of Alabama in the event that EPA does not allocate the allowances to such units. Finally, as discussed above, addition, the October 25, 2018, SIP revision makes minor changes that do not change the substance of the regulations, such as correcting typographical errors.

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<sup>4</sup> *See* notices of proposed rulemaking to approve Alabama's CSAPR state trading program regulations at 82 FR 39070 (August 17, 2017), and 81 FR 41914 (June 28, 2016).

With the aforementioned changes, the State's CSAPR regulations as revised remain consistent with all the applicable requirements in 40 CFR 52.38 and 52.39 for approval of CSAPR SIP revisions. EPA proposes to find that these changes to Rule 335-3-5 and Rule 335-3-8 also will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. Therefore, EPA is proposing to approve these changes into the Alabama SIP.

#### **IV. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, 335-3-8-.40, and 335-3-8-.46, which make the following revisions to Alabama's SIP: add the term "Group 2" to the State's rules consistent with EPA's CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program regulations, address the disposition of any allowances that remain after allocations to all existing units have reached their historical emission caps as well as any allowances set aside for new CSAPR NO<sub>x</sub> Ozone Season Group 2 units in Indian country within Alabama and not used for that purpose, and make other minor changes. The revisions were state effective on October 5, 2018, and December 7, 2018. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

#### **V. Proposed Action**

EPA is proposing to approve changes to the Alabama SIP, that were provided to EPA

through Alabama's August 27, 2018, and October 25, 2018, SIP revisions. Specifically, EPA is proposing to approve changes to ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, 335-3-8-.40, and 335-3-8-.46, as described above, in order to make the terminology in Alabama's regulations more consistent with the federal CSAPR regulations and explicitly provide for the disposition of certain allowances included in the State's overall budgets. This action is limited to the rules currently before the Agency and does not modify any other CSAPR rules in Alabama's SIP.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 13, 2019.

Mary S. Walker,  
Regional Administrator,  
Region 4.

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